

2.4 BIOLOGICAL ENVIRONMENT

2.4.1 Plant Species

2.4.1.1 Regulatory Setting

The United States Fish and Wildlife Service (USFWS) and California Department of Fish and Game (CDFG) share regulatory responsibility for the protection of special-status plant species. “Special-status” species are selected for protection because they are rare and/or subject to population and habitat declines. Special status is a general term for species that are afforded varying levels of regulatory protection. The highest level of protection is given to threatened and endangered species; these are species that are formally listed or proposed for listing as endangered or threatened under the Federal Endangered Species Act (FESA) and/or the California Endangered Species Act (CESA). Please see the Threatened and Endangered section (Section 2.4.4) in this document for detailed information regarding these species.

This section of the document discusses all the other special-status plant species, including CDFG fully protected species and species of special concern, USFWS candidate species, and non-listed California Native Plant Society (CNPS) rare and endangered species.

The regulatory requirements for FESA can be found at United States Code (USC) 16, Section 1531, et seq. See also 50 CFR Part 402. The regulatory requirements for CESA can be found at California Fish and Game Code, Section 2050, et seq. Department projects are also subject to the Native Plant Protection Act, found at Fish and Game Code, Section 1900-1913, and the California Environmental Quality Act, Public Resources Code, Sections 2100-211774.

2.4.1.2 Affected Environment

The NES was prepared in October 2008 for this Project (RBF Consulting, 2008). During the pre-field record search, 47 special status species were determined to have the potential to occur within 10 miles of the Project region based on a search of the California Natural Diversity Database (CNDDB [August 2008]), California Native Plant Society (CNPS [2008]), and the USFWS species lists. Of these 47 special status species, eight are listed as threatened or endangered under federal and/or state classifications.

No special status plants have been previously recorded in, or immediately adjacent to, the study area (CNDDB 2008). During habitat assessment surveys for sensitive plant species conducted on May 2, 2006 and October 6, 2008, no suitable habitat for any of the 47 special status species was present in the study area and no special status species were identified. The botanist determined that there are no special status species in the study area.

2.4.1.3 Environmental Consequences

No Build Alternative

Under the No Build Alternative, no changes would be made to the 29th and 23rd Avenue overcrossings. No impacts would occur to special status plant species within the Project area.

Build Alternative

The study area does not support special status plant species. The Proposed Project would not result in impacts on sensitive plant species. Special status plant species are not analyzed for cumulative impacts because no Project impacts would occur.

2.4.2 Animal Species

2.4.2.1 Regulatory Setting

Many State and Federal laws regulate impacts to wildlife. The USFWS, the National Oceanic and Atmospheric Administration (NOAA) Fisheries, and the CDFG are responsible for implementing these laws. This section discusses potential impacts and permit requirements associated with wildlife not listed or proposed for listing under the FESA and CESA. Species listed or proposed for listing as threatened or endangered are discussed in the Threatened and Endangered Species section (Section 2.1.3.3). All other special status animal species are discussed here, including CDFG fully protected species and species of special concern, and USFWS or NOAA Fisheries candidate species.

Federal laws and regulations pertaining to wildlife include the following:

- National Environmental Policy Act (NEPA)
- Migratory Bird Treaty Act (MBTA)
- Fish and Wildlife Coordination Act

State laws and regulations pertaining to wildlife include the following:

- California Environmental Quality Act (CEQA)
- Sections 1600-1603 of the Fish and Game Code
- Sections 4150 and 4152 of the Fish and Game Code

In addition to State and Federal laws regulating impacts to wildlife, there are often local regulations (example: county or city) that need to be considered when developing projects. If work is being done on Federal land (Bureau of Land Management [BLM] or United States Forest Service, for example), then those agencies' regulations, policies, and Habitat Conservation Plans are followed.

2.4.2.2 Affected Environment

The NES was prepared in October 2008 for this Project (RBF Consulting, 2008). Fifty-five (55) special status wildlife species, three of which are classified as fully protected by the CDFG, were identified during the pre-field review as having the potential to occur within the Project region. Of the 55 special status wildlife species, 23 are considered threatened or endangered under federal or state standards. None of the 55 special status

species identified would occur in the study area because it either lacks suitable habitat for the species or is outside the species' known range.

Of the 55 special status species identified from the review of existing information, nine special status fish species were identified as having the potential to occur within the Project region. None of the nine special status fish species identified would occur in the study area because there is no suitable habitat within the study area.

According to the pre-field review completed for the NES, three wildlife species were identified as being fully protected by the CDFG. Table 2.4-1, *Fully Protected Wildlife Species*, provides details on these species. None of the three fully protected species identified would occur in the study area because there is no suitable habitat identified within the study area.

Table 2.4-1: Fully Protected Wildlife Species

| Common Name Scientific Name | Status Federal/State | Distribution | Habitat | Rationale |
|---|-------------------------|---|--|--|
| Bald eagle <i>Haliaeetus leucocephalus</i> | D/FP | Nests in Siskiyou, Modoc, Trinity, Shasta, Lassen, Plumas, Butte, Tehama, Lake, and Mendocino Counties and in the Lake Tahoe Basin. Reintroduced into central coast. Winter range includes the rest of California, except the southeastern deserts, very high altitudes in the Sierra Nevada, and east of the Sierra Nevada south of Mono County. | In western North America, nests and roosts in coniferous forests within one mile of a lake, reservoir, stream, or the ocean. | Study area is largely urban and does not provide any foraging opportunities for this species. Outside of species breeding range. |
| Golden eagle <i>Aquila chrysaetos</i> | --/FP | Foothills and mountains throughout California. Uncommon nonbreeding visitor to lowlands such as the Central Valley. | Nests on cliffs and escarpments or in tall trees overlooking open country. Forages in annual grasslands, chaparral, and oak woodlands with plentiful medium and large-sized mammals. | Outside of species breeding range. |
| White-tailed kite <i>Elanus leucurus</i> | --/FP | Lowland areas west of the Sierra Nevada from the head of the Sacramento Valley south, including coastal valleys and foothills to western San Diego County at the Mexico border. | Low foothills or valley areas with valley or live oaks, riparian areas, and marshes near open grasslands for foraging. | Area likely too disturbed for use as foraging habitat and no breeding habitat available. |

Source: Natural Environment Study (Minimal Impacts) (RBF Consulting 2008)

Table 2.4-1, Fully Protected Wildlife Species, continued

Notes:

Federal Status:

D = delisted under the FESA

-- = no listing

State Status:

FP = listed as Fully Protected in the state of California

Several species of non-sensitive migratory birds have the potential to forage within, migrate through, or nest in trees and shrubs throughout portions of the study area. Although these species are not considered special status wildlife species, some of them are protected by California Fish and Game Code Sections 3503 and 2503.5 of the MBTA (50 CFR 10 and 21), as are their occupied nests and eggs.

2.4.2.3 Environmental Consequences

No Build Alternative

Under the No Build Alternative, no changes would be made to the 29th and 23rd Avenue overcrossings. No impacts would occur to special status wildlife species or species protected under the MBTA within the Project area.

Build Alternative

No suitable habitat was identified for any of the 55 special status wildlife species identified in the NES. The study area is in an urban setting and the value is low for all wildlife including special status species. The Project would not impact special status wildlife species.

There are no special status fish species nor any suitable habitat for these species located within the study area. The Project would not impact special status fish species.

There are no fully protected wildlife species nor any suitable habitat for these species located within the study area. The Project would not impact fully protected species.

Special status wildlife species, including special status fish and fully protected species, are not analyzed under Cumulative Impacts (Section 2.5) because no Project impacts would occur.

Special status and non-special status migratory birds and their nests are protected under the MBTA. Any removal of individuals or nests while the nests are occupied is considered a taking of a migratory bird species and is strictly prohibited. The Project has the potential to impact migratory bird species, mainly non-special status species, because the Project may affect 134 trees within the study area that provide potential nesting sites.

2.4.2.4 Avoidance, Minimization, and/or Mitigation Measures

Implementation of the following avoidance and minimization measures, related to biological (BIO) impacts would reduce or eliminate the adverse effects of the Proposed Project:

- BIO-1 To avoid potential impacts and to ensure that the Proposed Project does not result in take of migratory birds protected under the MBTA, their nests or eggs, the construction contractor will implement the following avoidance measure BIO-2 (provided below) prior to and during construction in the study area.
- BIO-2 To avoid potential impacts, if tree or shrub removal activities are scheduled to occur during the migratory bird breeding season (typically April 1 through July 31), then a qualified biologist will conduct a pre-construction survey for migratory bird nests in all areas that present suitable nesting habitat and will be impacted by construction. Active nests will be marked at a safe distance with visible flagging and the construction crew supervisor will be made aware of these locations. Construction may commence in all areas without active migratory bird nests. All migratory bird nests will remain undisturbed while they are active. After a nest ceases to be active (fledges or fails), and the qualified biologist has made this determination, construction may proceed in the area. If construction is initiated in one breeding season and persists into subsequent breeding seasons, additional surveys are not necessary unless construction activities involve additional tree or shrub removal.

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